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SECTION 118.1

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Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA.

Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: Following the Maréchaux decision, what are the CRA's views on providing advance tax rulings in respect of leveraged donation arrangements?

POSITION: See response.

2010 CTF Roundtable

Leveraged Donation Arrangements

Question 35

Following the Maréchaux decision,(note 1) what are the CRA's views on providing advance tax rulings in respect of leveraged donation arrangements?

Response 35

The Maréchaux decision and the CRA audits of leveraged donation arrangements raise concern about the validity of the tax results and benefits that are purported to accrue under such arrangements. The CRA plans to audit all tax shelter gifting arrangements, including leveraged donation arrangements, and will challenge any arrangement that does not comply with the Act. In light of this, the CRA has concluded that it would not be appropriate to consider requests for advance income tax rulings with respect to leveraged donation arrangements where the following elements are present:

- \* Financing is available to fund the donation, with the result that only a small percentage of the receipted amount is paid out of the taxpayer's own funds.
- \* The charity receives very little cash up front (a small percentage of the total receipted donation).
- \* The arrangement involves preordained transactions involving several entities.
- \* It is unlikely that the taxpayer has to repay the loan because the lender's recourse to collect is limited, or there is a provision to settle all or part of the loan by way of something other than a cash payment from the taxpayer.
- \* The arrangement involves long-term loans such that there is uncertainty about impact of future events (for example, whether there will be repayment by the taxpayer, whether refinancing will be available, or whether cash invested will grow sufficiently to equal the amount of the loan).

- \* The funds loaned to the taxpayer circle back to the lender.
- \* The use of a limited partnership or other structure permits losses or other deductions to flow through to investors.
- \* Offshore money managers or investment accounts are used.
- \* There is uncertainty about certain aspects such as valuation and questions of fact such as arm's-length issues.

Notes:

(1) Maréchaux v. The Queen, 2009 TCC 587; aff'd. 2010 FCA 287.

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